of a power of revocation throws upon the person seeking to uphold the settlement the burden of proving that such a power was intentionally excluded by the settlor, and that in the absence of such proof the settlement may be set aside." In the actual case the settlor was dead, and the court held that the plaintiff was not entitled to the benefit of the equitable right of the settlor in this respect; notwithstanding that it fairly appeared from all the circumstances that there was no definite intent to make an irrevocable gift. The court seem to have considered that a voluntary settlement ought always to be considered as revokable, unless it was shown positively that the settlor's attention was especially directed to the absence of the power of revocation, and he expressly declared his intention to exclude it. Such a very strict technical rule might indeed be fairly supposed to exist in England, from the cases of *Coutts* v. *Ackworth*, L. R. 8 Eq. 589, and *Wollaston* v. *Tribe*, 9 Id. 44; but in later cases the court refused to go to such a length, as appears from the well considered opinion in *Hall* v. *Hall*, L. R. 8 Ch. 430. The state of the law since *Hall* v. *Hall*, and the leading American case of *Garnsey* v. *Mundy*, 24 N. J. Eq. 243, of about the same date, was admirably summed up in a note by Mr. Bispham, in 13 American Law Register, 349. Mr. Bispham reduced the rule to this form: "Where the deliberate intent to make an irrevocable gift does not appear, and where no motive for such a gift is shown, the absence of a power of revocation is *prima facie* evidence of mistake." What evidence will suffice to show a deliberate intent, or an adequate motive from which it may be inferred, must depend on the circumstances of each case, as also perhaps on the temper of the court. The Massachusetts court, as appears from the case of *Taylor* v. *Buttrick*, 165 Mass. 547, is little disposed to set aside voluntary settlements except for fraud or duress; the absence of a power of revocation being considered in that jurisdiction as only slight evidence of mistake.

TITLE TO LOST CHATTELS. — A recent English decision of considerable importance in connection with the question as to the title to lost chattels, the real owner of which cannot be found, is *South Staffordshire Water Co.* v. *Sharman*, [1896] 2 Q. B. 44. In this case the defendant, a workman, while engaged under the plaintiff's directions in cleaning out a pool of water on land owned and possessed by the plaintiffs, found two gold rings in the mud at the bottom of the pool. The real owner not appearing, it was held that the water company was entitled to the rings, the decision being rested upon the broad ground that, where chattels are found on private premises, the one in possession of such premises — unless he has invited the public to resort there — is presumed to have been in possession of the chattels themselves, even though he was unaware of their presence. For this proposition the court relies upon the theory advanced in Pollock and Wright's Essay on Possession, pp. 37–42. See also Holmes, The Common Law, pp. 206–246.

Apparently, however, the position of the court is at variance with the decision in the leading case of *Bridges* v. *Hawkesworth*, 21 L. J. Q. B. 75, where the court held that one who found chattels upon a shop floor had a good title as against all but the true owner, it being immaterial whether the property was found on the public street or on private premises. It is conceived, furthermore, that the reasoning of the court in

South Staffordshire Water Co. v. *Sharman*, is inconsistent with certain well established principles of the law of larceny, and with such cases as *Merry* v. *Green*, 7 M. & W. 623, and *Durfee* v. *Jones*, 11 R. I. 588. See Clerk & Lindsell on Torts, 2d ed., 686*a*–686*d*.

The decision in the case under discussion might possibly have been rested upon either one of two grounds not chosen by the court, — that the rings had become part of the realty, or that the defendant was under the duty of handing over to his master, the plaintiff company, any articles which he might find. Ordinarily, the rights of the finder are not affected by the relationship of master and servant, but, if the servant is hired for the very purpose of finding articles lost by third parties, the master, and not the servant, is entitled to them. See 18 Am. Law Register, 698, 699: 19 Irish Law Times, 107. Considering the nature of the defendant's employment in *South Staffordshire Water Co.* v. *Sharman*, it is certainly difficult to see why both the finding and removal of lost articles were not directly within the contemplation of the parties, and why therefore the company, as master, was not entitled to the rings. Even, however, if the defendant was not expressly employed to find lost chattels, the finding was clearly incidental to the main service; and here also, on principle at least, the master's rights should prevail.

DEFEATING A TESTATOR'S WISHES. — It would be difficult to find in the books a more extraordinary example of the frustration by the courts of a testator's wishes than is furnished by the case of *Edson* v. *Bartow*, 41 N. Y. Supp. 723. This was an action brought by the next of kin to impose a trust on a bequest to the executors, and to declare that trust invalid. The terms of the bequest thus sought to be nullified were as follows: "If, for any reason any legacy . . . fail, . . . I give and bequeath the amount which shall not take effect absolutely to the persons named as my executors. In the use of the same I am satisfied that they will follow what they believe to be my wishes. I impose upon them, however, no conditions; leaving the same to them absolutely, and without limitation or restriction." The grounds advanced by the appellant for imposing the trust were that there was a secret understanding between testatrix and executors that the latter were to take, not beneficially, but subject to a legal obligation to carry out certain trusts expressly declared in previous sections of the will, and which in a former suit had been held void for indefiniteness. *Fairchild* v. *Edson*, 77 Hun, 298. If these trusts could be fastened on the apparently absolute bequest to the executors, they would of course be equally invalid in this form, and the next of kin would be let in. It must be admitted that the propositions of law necessary to support the appellant's position, while open to criticism in point of principle (see an article on the Failure of the "Tilden Trust," 5 HARVARD LAW REVIEW, 389), are sustained by the authorities. *Russell* v. *Jackson*, 10 Hare, 204; *O'Hara* v. *Dudley*, 95 N. Y. 403.

But did the facts of the case warrant the application of principles of questionable justice and expediency? In other words, what was the evidence of a secret undertaking on the part of the executors? They were three in number; one of them, Mr. Parsons, drew up the will, while the other two knew nothing of its contents until after the death of the testatrix. All were men of integrity, and anxious to fulfil what they believed to be a moral obligation. The court properly held that, as by